

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARK ARCHER,

Plaintiff,

v.

9:24-CV-0002
(BKS/MJK)

AIDAN FOX, et al.,

Defendants.

APPEARANCES:

MARK ARCHER
Plaintiff, pro se
5132
Delaware County Correctional Facility
280 Phoebe Lane
Suite 6
Delhi, NY 13753

MITCHELL J. KATZ
United States Magistrate Judge

DECISION AND ORDER

I. INTRODUCTION

Plaintiff Mark Archer commenced this action by filing a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 ("Section 1983"), together with an application for leave to proceed in forma pauperis and a letter request regarding his conditions of confinement. Dkt. No. 1 ("Compl."); Dkt. No. 2 ("IFP Application"); Dkt. No. 6 ("Letter Request"). By Decision and Order entered on January 31, 2024, the Honorable Brenda K. Sannes granted plaintiff's IFP Application, and following review of the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), found that plaintiff's Eighth Amendment excessive force claims

against Corrections Officers Fox, Rubera, and Geeler survived sua sponte review and required a response. Dkt. No. 7 ("January 2024 Order").

Presently before the Court is plaintiff's amended complaint. Dkt. No. 15 ("Am. Compl").

II. SUFFICIENCY OF THE AMENDED COMPLAINT

A. The Original Complaint and January 2024 Order

In his complaint, plaintiff asserted allegations of wrongdoing that occurred on November 29, 2023, while he was incarcerated at Delaware County Correctional Facility as a pretrial detainee. *See generally* Compl. As noted, the complaint was construed to assert Eighth Amendment excessive force claims against defendants Fox, Rubera, and Geeler, which survived sua sponte review. *See generally*, January 2024 Order.

B. Review of the Amended Complaint

Because plaintiff is proceeding in forma pauperis and is an inmate suing government employees, his amended complaint must be reviewed in accordance with 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b). The legal standard governing the review of a pleading pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b) was discussed at length in the January 2024 Order and it will not be restated in this Decision and Order. *See* January 2024 Order at 2-4.

Plaintiff's amended complaint is virtually identical to the original complaint, except that the amended complaint clarifies the spelling of defendant "Geeler" as "Geelen" and alleges that plaintiff suffered a "sho[u]lder" injury as a result of the alleged use-of-force incident that occurred on November 29, 2023. *Compare* Compl. *with* Am. Compl.

In light of the January 2024 Order, and mindful of the requirement to liberally construe

pro se pleadings, *see, e.g., Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 191 (2d Cir. 2008), the amended complaint alleges enough to warrant a responsive pleading from the defendants named therein. Accordingly, the amended complaint is accepted for filing and replaces the original complaint in its entirety. In so ruling, the Court expresses no opinion as to whether plaintiff's Section 1983 claim can withstand a properly filed dispositive motion.

III. CONCLUSION

WHEREFORE, it is hereby

ORDERED that the amended complaint (Dkt. No. 15) is accepted for filing and will supersede and replace the original complaint as the operative pleading; and it is further

ORDERED that the Clerk update the docket to clarify the spelling of defendant "Geeler" as "Geelen"; and it is further

ORDERED that plaintiff's Fourteenth Amendment excessive force claims against defendants Fox, Rubera, and Geelen **SURVIVE** sua sponte review and require a response; and it is further

ORDERED that the Clerk shall issue summonses and forward them, along with three copies of the amended complaint, to the United States Marshal for service on defendants Fox, Rubera, and Geelen.¹ The Clerk shall forward a copy of the summons and amended complaint by mail to the Delaware County Attorney's Office, together with a copy of this Decision and Order; and it is further

ORDERED that upon the completion of service, a response to the amended complaint be filed by defendants Fox, Rubera, and Geelen, or their counsel, as provided for in the

¹ As noted, the Court previously granted plaintiff leave to proceed with this action *in forma pauperis*. See January 2024 Order.

Federal Rules of Civil Procedure; and it is further

ORDERED that all pleadings, motions and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions; motions will be decided on submitted papers, without oral argument, unless otherwise ordered by this Court. Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so may result in the dismissal of this action; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: April 4, 2024
Syracuse, NY



Mitchell J. Katz
U.S. Magistrate Judge